

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH
NORTHERN DIVISION

In re:)	
)	
UNITED STATES OF)	
AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	
)	
WILLIAM CLYDE ALLEN,)	Case No.
III,)	1:18-CR-00086
)	
Defendant.)	
)	
-----)	

BEFORE THE HONORABLE DUSTIN PEAD

October 15, 2018

Detention Hearing

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October 15, 2018

(11:07 a.m.)

THE COURT: Good morning everybody. Thank you for your patience. Welcome to you, Mr. Allen.

We're here on a detention hearing. Today's date is October 15th, of course, and your attorney is to your left, Mr. Donaldson.

Representatives from the United States are to your collective left as well. To all of you welcome.

And I have had a chance -- also welcome to your family members and friends and other interested parties here. Mr. Allen, I'm grateful for their appearance too.

I have had a chance to review the Pretrial Service Report and speak with our officer assigned on drafting the report.

Mr. Vincent, have you had adequate opportunity to review it?

MR. VINCENT: We have, Your Honor.

THE COURT: Mr. Donaldson, have you as well?

MR. DONALDSON: Yes, Your Honor.

THE COURT: Gentlemen, I'm hoping you can let me know where we stand today. Mr. Donaldson, I'm happy to go through if it is a contested detention hearing or if there are some alternatives we're

1 considering short of a contested hearing. What's
2 your view?

3 MR. DONALDSON: I think we could just handle
4 it sort of in the normal course.

00:21:12 5 THE COURT: Great. Mr. Vincent, let's start
6 with you.

7 MR. VINCENT: The court has had the privilege
8 of seeing the Pretrial Services Report and I think it
9 is very thorough. The only disagreement we have, and
00:21:23 10 I have spoke with Mr. McBride about this, is that on
11 the presumption of detention he indicated in the
12 report that the presumption does not apply.

13 We looked at the statute and we believe that
14 it clearly does as under 3142(e)(3)(C) it involves an
00:21:45 15 offense under 2332b(g)(5)(B) which is a biological
16 weapon. In the 175 charge is listed in there and it
17 doesn't say 175(a) but it says 175 or 175b biological
18 weapon. And as such, we would -- we would be of the
19 position that it is presumed that he should be
00:22:13 20 detained.

21 THE COURT: Thank you.

22 MR. VINCENT: Having said that, I know that
23 the court has had an opportunity to see his mental --
24 the reports of his mental health history, of his
00:22:22 25 prior incarcerations and his compliance, and the

1 evaluation or the opinion of the Pretrial Services
2 Officer that detention should be applied and we would
3 submit it on that.

4 THE COURT: Thank you. Mr. Donaldson, let's
5 hear from you.

6 MR. DONALDSON: Well, of course I agree with
7 the report. I don't think it is a presumption case
8 so I'll address it that way first if I could. In
9 terms of flight, Mr. Allen has -- well I'll combine
10 -- I don't know if you have a problem with this, I am
11 going to combine both the proffers in the argument.

12 THE COURT: Sure, I'm perfectly fine with
13 that.

14 MR. DONALDSON: All right. Of course it has
15 been confirmed through his wife, his father, and his
16 mother that he has lived in Utah, excuse me, for all
17 but about four years of his life when he was in the
18 military. And he has lived at the address in Logan
19 there for at least two years.

20 Everybody who is significant to Mr. Allen
21 lives in the State of Utah. They're here in the
22 courtroom including his sister Amber Rainford. His
23 wife effectively is his life. He is the principal
24 caretaker for her. He gets up and makes her
25 breakfast in the morning and she has confirmed all

1 this, by the way. He does the wash in the home
2 because the washing machines apparently are down some
3 stairs. He maintains the household. He shovels the
4 snow. He cuts the lawn. He keeps the yard in order.
5 He basically just cares for her all of the time.

6 I noticed in his criminal history there was
7 no reference to a prior failure to appear, but I
8 think that cuts his way in terms of his willingness
9 to show up together with conditions that the court
10 could set. In terms of danger, um, I think there are
11 things that the court could do to manage any concerns
12 of danger and I'm just going to lay some of those
13 out.

14 You could restrict internet access for him.
15 I have spoken again to his wife and she's confirmed
16 that she will either have their internet service
17 ended or she could just password protect any device
18 that she has or that are in the home that have
19 internet access.

20 The court could also limit his mailing
21 privileges to restrict private letters to government
22 leaders allowing him, of course, to file his taxes
23 and to do things like that that anybody would have to
24 do. And if there is any question about that, you
25 could have him check with the Pretrial Officer. I

1 would also recommend that electronic monitoring is a
2 possibility and that you could restrict his movements
3 that way and at least track them. In terms of
4 concerns about past, and we're talking most recently
5 at most 18 months ago, any kind of drug or alcohol
6 treatment concerns we can have him subject to random
7 monitoring and testing.

8 Having spoken again to his wife, she said she
9 would do virtually anything within her ability to
10 make sure that he complies with the court's order and
11 I'm sure that that would include him appearing in a
12 testing site.

13 Lastly, there could be just a very initial
14 mental health screening that could be done just with
15 the requirement that there be treatment if it seems
16 appropriate and attendance at treatment. So I
17 believe all of those conditions make this an offense
18 or charged offenses and a person who is subject to
19 manageable, you know, conditions of release. So I
20 would -- I believe that the court should release him.

21 THE COURT: Thank you, Mr. Donaldson.

22 Mr. Vincent, can you walk me back through the
23 presumption argument. Let's go back to the statute.

24 MR. VINCENT: Yes, Your Honor. So on the
25 Pretrial Services Report on page seven it indicates

1 that the charge doesn't appear to be listed under 18
2 USC 3142(e)(3). If you go to 3142(e)(3), it talks
3 about Section 3 talks about that it is a -- it is a
4 presumption should be detained. And then if you go
5 down to Section C.

6 THE COURT: Sub paragraph C?

7 MR. VINCENT: Yes. It says, an offense
8 listed in Section 2332b(g)(5) paren capital B, and
9 then it says for which a term of imprisonment is more
10 than 10 years as prescribed.

11 Well, if you go to that section it lists
12 certain terrorist crimes that are listed under (B)
13 small (i) and on the code that's Page 8704. As you
14 go down there it talks about 175 or 175b relating to
15 biological weapons. Well the charge in the complaint
16 listed 175(a) and the maximum penalty is life
17 imprisonment at this juncture. So --

18 THE COURT: Thank you.

19 MR. VINCENT: -- we would argue that that
20 presumption does apply.

21 THE COURT: Is there anything else you would
22 like to address from Mr. Donaldson's arguments.

23 MR. VINCENT: Well, our concern on the flight
24 isn't -- we will concede that he has lived here most
25 of his life and his family is very supportive. Our

1 concern is that he doesn't tend to acknowledge that
2 there may be some mental health issues. And to put
3 that burden on his wife seems extraordinary
4 especially given the light of the arguments or of the
5 conduct that he is charged with committing.

6 And as such, we would think that and he is
7 looking at considerable penalties and that doesn't
8 play into it. Before he is aware of it but
9 definitely now there would be an incentive to leave
10 so that he doesn't have to face the piper.

11 Again, with the dangerousness, I think that
12 the charges themselves speak loudly enough to address
13 that danger.

14 THE COURT: Thank you, Mr. Vincent. Let's
15 start with the presumption. I'm sorry. Of course,
16 Mr. Donaldson.

17 MR. DONALDSON: Oh, no. Um, to the extent
18 that the court believes that the presumption does
19 apply, and I appreciate Mr. Vincent's analysis, um, I
20 still think in this situation given his -- just all
21 of his ties are here and he does have family support,
22 and frankly what I think happens sometimes when
23 someone like Mr. Allen -- when problems seem to
24 evidence themselves there is -- there is increased
25 efforts by family members to make sure that he is

1 compliant and that he does what he is supposed to do.

2 Just addressing more directly the
3 government's argument about flight, this man really
4 has no resources. To the extent that there looks
00:30:13 5 like there is positive cash flow there in the family,
6 I think that's pretty much controlled by his wife.
7 And she's not going to give him money to run any
8 place.

9 THE COURT: I don't think flight is honestly
00:30:24 10 an issue here.

11 MR. DONALDSON: Okay. In terms of concerns
12 about sort of mental health, it is true that
13 sometimes people have conditions that are resistive
14 to treatment. But having met with Mr. Allen on I
00:30:41 15 think five occasions now, I believe he will follow
16 what the court tells him to do or he will tell you he
17 won't do it. So I think we can address that through
18 the resources that are available through pretrial
19 and EM. So that's all.

00:30:58 20 THE COURT: Thank you.

21 MR. DONALDSON: You bet.

22 THE COURT: I appreciate your thoughtfulness.
23 And Mr. Allen, Mr. Donaldson is an excellent attorney
24 and he is trying to address some complicated issues.
00:31:09 25 I see you have a lot of people here in support.

1 There are a couple of things that we need to grapple
2 with. The first one is presumption of detention.
3 There is a category of offenses for which it's
4 presumed someone should be detained. It's a
5 rebuttable presumption, to use terms that we use here
6 in court. The government has to persuade me,
7 notwithstanding rebuttable presumption, that you
8 should be detained. You have a burden in a
9 presumption case but it's a burden of production.

10 The first issue we have to address is whether
11 the statute, based on what you're charged with,
12 triggers the presumption. Mr. Vincent has cited
13 18 USC 3143(e)(3) subparagraph (C). It references
14 another part of the United States code. It is 18 USC
15 2332 small b paren (G) paren (5) paren large (B).

16 When I go there, it references another part
17 of the Code. So our goose chase takes us down to
18 18 USC 175 or 175b. So when I take a look at
19 18 USC 175, and 175b, 175b doesn't apply, you're not
20 charged with that offense. The question is whether
21 175 triggers it. And if you take a look there is
22 actually two 175s. One is 175 in isolation and the
23 next one is 175a, no paren. If you take a look at
24 175a, that doesn't seem to have a criminal component.
25 What it does is it authorizes the attorney general to

1 request the Secretary of the Defense to assist in an
2 enforcement of an emergency situation involving a
3 biological weapon of mass destruction.

4 That section or that statute is not cited
00:33:13 5 under 2332 small b but 175 is. So if you take a look
6 at 175, there are three subparagraphs A, B and C.
7 This is Page 500 roughly, Mr. Donaldson.

8 MR. DONALDSON: Thank you.

9 THE COURT: You're charged, of course, under
00:33:30 10 175 small paren (a). Looking at the plain language
11 it does appear to me, Mr. Allen, that the presumption
12 is triggered. It is true that 2332b does not
13 reference 175(a) in particular. I think a fair
14 reading or reasonable reading is that it is intended
00:33:54 15 to capture 175 in its entirety. That includes
16 subsection (a).

17 I recognize that this is a little bit of a
18 nuanced argument. Frankly we could probably examine
19 it a little bit closer if need be, but I think it is
00:34:10 20 adequately reasonable or reasonable enough to
21 conclude that the presumption is triggered. But let
22 me address this both at the presumption is triggered
23 and if it is not. If the presumption is triggered,
24 then, of course, you have the burden of production as
00:34:26 25 I've mentioned here. Earlier the government has the

1 burden of persuasion.

2 Mr. Allen when I look at you and I look at
3 your family members and friends that are here, this
4 case strikes me as a case of unique contrast to be
5 frank with you. You served honorably in the United
6 States Military, Navy if I understand correctly, from
7 1998 to 2002 which the report identifies. There is
8 some information about your service in the Navy that
9 is corroborated and some that isn't, but there is
10 honorable service. I think you should be commended
11 for what you have done with the Navy.

12 I'm also impressed by your love and
13 assistance to your wife, who I note is in the
14 courtroom and disabled and that she needs you. I
15 remember our last hearing here on October 5th you
16 expressed your concerns for her physical wellbeing.
17 And I think that says a lot about the type of person
18 that you are. I think that shows your
19 thoughtfulness, your concern for others.

20 You have also been, I think if we read the
21 complaint, noncombative. In fact, Mr. Allen, it
22 appears you have been very cooperative. The
23 complaint indicates that you understood what was
24 being alleged against you. You even agreed to answer
25 some questions. You were shown photographs of

1 letters and notes referenced in the complaint. You
2 appear to have admitted that you sent them and you
3 even added some additional letters that you may have
4 sent including to the Queen of England, the President
5 of Russia, and another U.S. Government Official.

6 You identified how you had collected those
7 addresses and from the internet. You explained to
8 agents who had conducted the search warrant that you
9 researched Ricin on the internet. You had allegedly
10 admitted to the purchase of 100 castor beans from
11 eBay. You even provided the FBI with your log-in and
12 password for your e-mail account which connected to
13 eBay. And, of course, subsequent review of the
14 accounts showed the purchase that you had made I
15 believe it was December of 2017.

16 So you have someone that -- your conduct here
17 doesn't reflect kind of this sinister nature of the
18 materials in the letters themselves, but we can't
19 ignore what those letters contained. There is, in
20 other words, this is the contrast I'm talking about.
21 There is stark evidence of an absence of concern for
22 others. For instance, chief among them is the Ricin
23 itself, of course. The letter to the President, for
24 instance, which contained the note "Jack and the
25 Missile Being Stock Powder" contained ground castor

1 beans that yielded a positive result for Ricin. The
2 Pentagon received two letters, also with pieces of
3 castor beans, and there was an additional letter to
4 the FBI, again, tested positive for Ricin.

00:37:31 5 The complaint indicates, Mr. Allen, that you
6 expressed at least in some way your motivation for
7 what had allegedly happened. The complaint says that
8 you may have wanted them in case World War III broke
9 out. You thought you could make them useful to bear
00:37:48 10 arms and to defend the nation. You also stated that
11 you never used castor beans before.

12 So I have to determine under Mr. Donaldson's
13 argument whether this sort of conduct is anomalous.
14 In other words, are there reasons to believe that
00:38:03 15 this is a recent problem or is there hints of a
16 larger pattern, maybe even a concerning pattern. And
17 there is unfortunately some evidence at least
18 according to the complaint recognizing the weight
19 that I give a complaint, that this may be part of
00:38:18 20 perhaps a larger pattern of concern on your own part
21 about the government.

22 We have talked about the letters, the Ricin
23 letters that were sent most recently but there has
24 been some other threats. For instance, a threat in
00:38:32 25 2015 to the CIA threatening to kill, you may have

1 said the President of the agency, I don't know if you
2 meant the president -- the director of the CIA or the
3 President of the United States, if they did not stop
4 infringing on your constitutional rights. In 2017,
5 you purportedly sent an e-mail bomb threat to
6 Lackland Air Force Base in Texas which said, "I have
7 a bomb to kill your people." I believe you admitted,
8 according to the complaint, that you had sent that
9 e-mail.

10 Most recently, about a week before the Ricin
11 letters, an e-mail to the Utah Department of Public
12 Safety entitled "Multiple Imminent Radiation
13 Attacks." And I see many individuals who are
14 concerned about the government. And concerned about
15 government action or inaction. But, of course, these
16 were a little bit different, the most recent letters.
17 I know that you were interviewed regarding some of
18 the earlier threats but these were different because
19 of the positive result for Ricin. It goes without
20 saying that the element of Ricin in the letters I
21 think poses a danger, significant danger. Not just
22 for you, but, of course, for the recipients. Ricin,
23 of course, as the complaint describes, can be
24 extracted from castor beans either through milling or
25 grinding or through solvents. The complaint reflects

1 that it doesn't require a lot of technical ability
2 perhaps, but the process is, as you might expect,
3 very dangerous. Of course, it's dangerous to anyone
4 who is exposed to it. Serious risks exist upon
5 ingestion, inhaling, or injection including potential
6 death within a short period of time. And as you may
7 be aware, there is no known antidotes for Ricin.

8 So it strikes me that what happened most
9 recently or allegedly has happened most recently is
10 part of perhaps a larger concern, a larger problem of
11 threats to the government. And it's not of just an
12 ongoing nature, I would suggest, and I think that the
13 evidence does support a conclusion of an escalating
14 nature. So the inclusion of the Ricin in the
15 letters, at least the ones that were retrieved, I
16 think causes me some significant alarm.

17 When I read the Pretrial Service Report,
18 Mr. Allen, I see some things that have happened to
19 you over the years that cause me some concern. And
20 I'm trying to determine all of this in the context of
21 whether you pose a danger to yourself or to the
22 community. I noted, for instance, in the report,
23 that in your term in the Navy, you were physically
24 assaulted, seriously assaulted, by some servicemen
25 which resulted in a head injury. I also note as we

1 have referenced, at least generally here today, a
2 confluence of other challenges like substance use.
3 There may even be ongoing later emotional or mental
4 health concerns that have manifested themselves only
5 lately. It would not surprise me if there are a
6 number of factors that maybe have contributed to the
7 point to where we're at today. Mr. Donaldson sort of
8 referenced this when we talked about a mental health
9 evaluation. I'm without a lot of information about
10 what we can attribute to certain alleged conduct and
11 how we balance that versus danger and flight.

12 I'm prepared to conclude that you have more
13 than met your burden of production on flight risk. I
14 do not believe you pose a significant risk of flight
15 or even an unmanageable risk of flight, frankly.
16 Everything you love, everything you cherish is within
17 the state. I don't believe that you would flee, but
18 I do conclude that you pose a danger to the
19 community, danger to yourself, danger to others.

20 I'm also concerned about some of the alleged
21 incidents of self-harm in the past. And I'm worried
22 frankly, Mr. Allen, with what has happened here that
23 the allegations reflect at a minimum a recklessness,
24 an absence of regard for your own safety let alone
25 the safety of others.

1 When you add that to the earlier threats, I
2 believe they have, as I mentioned earlier, escalated,
3 gotten more serious. I do think I would benefit from
4 a full mental health evaluation but I cannot and
5 conclude that I should not order your release at this
6 time. So I conclude you are a danger to the
7 community.

8 Mr. Donaldson you had referenced a mental
9 health treatment. Is there anything that you would
10 like to --

11 THE DEFENDANT: If I can say something?

12 THE COURT: I want you to ask Mr. Donaldson
13 first if that is okay. All right?

14 THE DEFENDANT: I'll follow the spirit if it
15 is okay, sir.

16 THE COURT: Mr. Donaldson?

17 THE DEFENDANT: I can --

18 THE COURT: Why don't I let --

19 THE DEFENDANT: I don't have -- I'm not a
20 secretive kind of guy but I had told the FBI when I
21 mailed the beans that they were whole. They weren't
22 crushed or processed in any. If you have all of the
23 letters you can see that that is true.

24 MR. DONALDSON: Thanks. Let me just say this
25 and --

1 THE DEFENDANT: It is not illegal to mail
2 them I got them from eBay. So --

3 THE COURT: I understand.

4 THE DEFENDANT: It wasn't a processed thing.

00:44:05

5 THE COURT: And I think Mr. Donaldson's
6 concern is a legitimate one here. I don't want you
7 to make any statements that could further incriminate
8 you any more.

9 THE DEFENDANT: Okay.

00:44:13

10 THE COURT: I think the concern, maybe I
11 should have said it a little bit better, Mr. Allen,
12 it is not just the presence of the beans, it is in
13 conjunction with the appearance of threat.

14 THE DEFENDANT: Right.

00:44:24

15 THE COURT: And so that's -- it's not the
16 possession of them alone, it's the combination of the
17 threat that causes me concern.

18 THE DEFENDANT: It's the radiation attacks
19 from the federal government.

00:44:39

20 MR. DONALDSON: Bill --

21 THE COURT: Sure. So here is what I would
22 like to do.

23 THE DEFENDANT: Bill Clinton did a report on
24 it.

00:44:43

25 THE COURT: And I do want you to share this

1 information with Mr. Donaldson so he can evaluate it
2 and use this as part of your case. But I do want to
3 caution you about making statements in this setting.
4 I don't think it would be helpful to you any further,
5 okay.

6 THE DEFENDANT: Yes, sir.

7 MR. DONALDSON: I just -- are you done?

8 THE COURT: No, go ahead.

9 MR. DONALDSON: I don't want to cut you off.

10 THE COURT: No.

11 MR. DONALDSON: Should, as the case goes
12 forward, should the allegations about the condition
13 of the castor beans being Ricin and ground up, or
14 should there be other innocent explanations where
15 they would not have been in that condition, I
16 certainly feel that that would be a grounds to reopen
17 in front of you since you have premised so much on
18 those allegations. Is that fair?

19 THE COURT: I think that's fair. And
20 Mr. Vincent, I noted a preliminary field testing
21 positive result and then subsequent confirmation not
22 just of the letter to the President but also the two
23 to the Pentagon and one to the FBI. But maybe I am
24 mistaken.

25 MR. VINCENT: That's correct.

1 THE COURT: Okay.

2 MR. VINCENT: Since then, the CIA received a
3 letter but didn't confirm positive on the Ricin. And
4 the Secretary of the Air Force received a letter just
00:45:58 5 last Friday and it did confirm positive.

6 THE COURT: All with the return address from
7 Mr. Allen?

8 MR. VINCENT: Some of them had the return
9 address, some didn't, but obviously the same
00:46:09 10 handwriting.

11 THE COURT: So the only one that didn't have
12 the positive result on Ricin was the most recent one
13 that he had referenced in his interview?

14 MR. VINCENT: Well, I don't want to misspeak.

00:46:17 15 THE COURT: Okay.

16 MR. VINCENT: It was the CIA one that -- that
17 didn't come back positive on the Ricin.

18 THE COURT: But you're right, Mr. Donaldson,
19 I'm examining the detention through the lens with
00:46:36 20 which we have discussed here today. So if further
21 evidence demonstrates that the foundation of my
22 conclusions here is suspect, I would be happy to
23 revisit it definitely.

24 MR. DONALDSON: Thank you, Your Honor.

00:46:47 25 THE COURT: Mr. Vincent, anything else?

1 MR. VINCENT: No, Your Honor.

2 THE COURT: Mr. Allen, the next hearing, of
3 course, is going to be the initial appearance, if an
4 indictment is returned, an indictment is being
5 pursued this Wednesday; is that correct?

00:46:56

6 MR. VINCENT: It is presently in Washington
7 and they sort of run the reigns on that matter.

8 THE COURT: Don't we have an initial
9 appearance set though for this Thursday?

00:47:10

10 MR. VINCENT: Thursday at 11.

11 THE COURT: So that will be the next hearing
12 and we'll go from there. Thank you to all of you
13 family members and friends for being here. I
14 appreciate your presence. I'm sure Mr. Allen does as
15 well. The hearing is concluded.

00:47:21

16 (Whereupon, court adjourned at 11:34 a.m.)

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REPORTER'S CERTIFICATE

I, Laura W. Robinson, Certified Shorthand Reporter, Registered Professional Reporter and Notary Public within and for the County of Salt Lake, State of Utah, do hereby certify:

That the foregoing proceedings were taken before me at the time and place set forth herein and were taken down by me in shorthand and thereafter transcribed into typewriting under my direction and supervision;

That the foregoing pages contain a true and correct transcription of my said shorthand notes so taken.

In witness whereof I have subscribed my name this 26th day of September, 2019.

Laura W. Robinson
RPR, FCRR, CSR, CP